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Transportation  
Authority**

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September 22, 2008

TO ALL PURCHASER'S OF CONTRACT DOCUMENTS

**ADDENDUM NO. 1**

RE: Contract No. LB 2038-000-002  
Roof Replacement Maintenance and Administration Buildings  
William Preston Lane Jr. Memorial Bridge

To Whom It May Concern:

The following changes have been made to the Contract Invitation for Bids Documents:

1. **Delete** pages 83, 84, and 123 and **add** the same numbered pages dated September 24, 2008. **Delete** pages 37, 38 and 39.
2. Attached are the minutes and MBE handouts from the Pre-bid Meeting held on September 16, 2008.
3. The Bid Due Date for the above referenced contract is still on **October 3, 2008.**

Very truly yours,

Douglas M. Hutcheson, P.E.  
Deputy Director of Engineering

DMH/jcj

THIS ADDENDUM MUST BE ATTACHED TO THE OUTSIDE COVER OF THE BID BOOK. FAILURE TO DO SO MAY RESULT IN REJECTION OF YOUR BID.

THE ATTACHED RECEIPT MUST BE RETURNED TO THIS OFFICE. FAILURE TO RETURN THE RECEIPT MAY RESULT IN REJECTION OF YOUR BID.

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- C. All plies will be adhered with Flashing Adhesive, unless otherwise specified. The modified membrane will be used as the flashing and nailed off 8" O.C. at all vertical surfaces. Two plies of base sheet will be fully adhered with the cold flashing adhesive and one ply of the white mineral cap sheet will be installed for the final flashing ply of the system. Three (3) plies in total.
- D. The entire sheet of flashing membrane must be solidly adhered to the substrate.
- E. Seal all vertical laps of flashing membrane with a three-course application of Flashing Adhesive and fiberglass mesh.
- F. Counter flashing, cap flashings, expansion joints, and similar work to be coordinated with roofing work are specified in other sections.
- G. Roof accessories, miscellaneous sheet metal accessory items, including piping vents and other devices to be coordinated with modified bituminous roofing system work are in other sections.

### 3.5 APPLICATION OF SURFACING

- A. Prior to installation of surface, obtain approval from manufacturer as to work completed.
- B. White Kynar Coating for all flashing and exposed roof areas.
  - 1. Allow all cold applied modified roof system to properly dry and cure before installing the white coating. (Cure time to be recommended by the roof system manufacturer)
  - 2. Roll and / or brush apply white Kynar at a rate of (1) gallon per 100 square feet/ coat is required. Paint all exposed membrane with manufacturer's White Kynar coating installed at a rate of 1 gallon per square per coat. This shall be a two-coat application with the finished stroke in one direction.

The coating shall have the following physical characteristics:

Meets or exceeds all of the following: CRRC, Energy Star and Title 24 Standards water based, contains Kynar Aquatec resin

Color: White

Weathering: No deterioration over 1000 hours per ASTM G 26 test requirements

Reflectivity: 90%

Emittance: 85

SRI for LEED: 113

Elongation: 250% minimum

Tensile: 250 psi minimum

Warranty of entire system down to the deck:

The white Kynar Energy Star Coating System shall be covered within the warranty of the entire roof system for the twenty-five (25) year period. The owner shall receive one (1) warranty covering all components of the entire roof system including the white Kynar Energy Star Coating System.

**3.6 CLEANING**

- A. Remove drippage of bitumen from all walls, windows, floors, ladders and finished surfaces.
- B. In areas where finished surfaces are soiled by bitumen or any other sources of soiling caused by work of this section, consult manufacturer of surfaces for cleaning advice and conform to their instructions.

**3.7 FINAL INSPECTION**

- A. At completion of roofing installation and associated work, meet with Installer, installer of associated work, Owner, roofing system manufacturer's representative, and other representatives directly concerned with performance of roofing system.
- B. Walk roof surface areas of the building, inspect perimeter building edges as well as flashing of roof penetrations, walls, curbs and other equipment. List all items requiring correction or completion and furnish copy of list to each party attending.
- C. The Roofing System Manufacturer reserves the right to request a thermographic scan of the roof during the roof installation and / or final inspection to determine if any damp or wet materials have been installed. The thermographic scan shall be provided by the Roofing Contractor at a negotiated price.
- D. If core cuts verify the presence of damp or wet materials, the Roofing Contractor shall be required to replace the damaged areas at its own expense.
- E. Repair or replace (as required) deteriorated or defective work found at time above inspection to a condition free of damage and deterioration at time of Substantial Completion and according to warranty requirements.
- F. The Contractor is to notify the Owner upon completion of corrections.
- G. Following the final inspection, acceptance will be made in writing by the material manufacturer and all warranty papers will be processed.

END OF SECTION

## SCHEDULE OF PRICES

NOTE: This proposal shall be filled in by the bidder, with the prices written in words and numerals. The extension amounts of unit costs shall also be filled in. For complete information concerning these items, see Specifications, Special Provisions and Contract Form.

ITEM NOS.	APPROXIMATE QUANTITIES	DESCRIPTION OF ITEM AND PRICE BID (IN WRITTEN WORDS)	UNIT PRICE		AMOUNTS	
			DOLLARS	CTS.	DOLLARS	CTS.
101	1	MOBILIZATION  AT _____ LUMP SUM				
401	1	ROOF REPLACEMENT MAINTENANCE AND ADMINISTRATION BUILDINGS  AT _____ LUMP SUM				
402	1	MISCELLANEOUS CONTINGENCIES ALLOWANCE  AT THIRTY THOUSAND LUMP SUM			\$30,000	00
		AGGREGATE AT UNIT PRICES USING ITEMS 101, 401 AND 402  AT _____ LUMP SUM				

CONTRACT NO. LB 2038-000-002

September 24, 2008

Addendum # 1

## Pre-Bid Meeting

### MINUTES

CONTRACT NO. LB 2038-000-002

ROOF REPLACEMENT MAINTENANCE AND ADMINISTRATION BUILDINGS

WILLIAM PRESTON LANE JR. MEMORIAL BRIDGE

September 22, 2008

The following were in attendance:

Michael Kim	Autumn	Raymond Klein	Alliance Roofing
Lee Carrigan	MdTA- Facilities Construction	Rick Sherman	Ruff Roofing
Rodger Janseen	MdTA-Facilities Construction	Paul Waters	MdTA
Todd Holtzner	Garland Company	Orlando Price	MdTA/MBE
Mark Roney	Simpson of Maryland	Alisha Wright	MdTA
Bob Tanner	Cole Roofing	William Kirk	MdTA
Don Vanlandingham	Kalkreuth Roofing	John Jewell	MdTA
Andrew Vanlandingham	Kalkreuth Roofing	Don Watts	MdTA
Perry Cho	Interstate Corporation		

Alisha Wright opened the meeting with a brief explanation of the Scope of Work and the following announcements:

1. Bids for Contract No. **LB 2038-000-002** are due at 12 Noon, **October 3, 2008**. Bids should be placed in the Bid Box located on the first floor of the Engineering Building (300 Authority Drive, Dundalk, MD 21222) and should consist of one completed bid book.
2. Sending bids by overnight delivery service is not recommended. However, if that is done, the bid should be delivered one day in advance. It will be the responsibility of the Contractor to make sure that his bid package is placed in the Bid Box. **The outside envelope of the mailed package must clearly identify the Contract number and mention that it is a bid package.**
3. Written questions will be accepted by the MdTA until 12:00 Noon, 7 days prior to the bid. These questions should be addressed to:

Maryland Transportation Authority  
Engineering Division  
300 Authority Drive  
Baltimore, MD 21222  
Attn: John Jewell

Alternatively, questions may be faxed to 410-537-7801. Responses to questions received by MdTA will be distributed to all purchasers of bid documents.

4. The minutes will be distributed to all purchasers of the bid documents and will be considered the official record of this meeting.
5. A list of current plan holders is available at [www.mdtransportationauthority.com](http://www.mdtransportationauthority.com).

Orlando Price provided a brief description of the Minority Business Enterprise (MBE) participation program:

As of October 1, 2004, the MBE Utilization and Fair Solicitation Affidavit must be submitted with the bid/offer. If the bidder/offeror fails to submit the forms with the bid/offer as required, the procurement officer shall deem the bid/offer non-responsive or shall determine that the bid/offer is not reasonably susceptible of being selected for award.

An overall MBE subcontract participation goal of 25 percent of the total contract dollar amount has been established for this procurement. This amount includes sub-goals of 4 percent of the total contract dollar amount to be allocated to women-owned businesses, 12 percent of the total contract dollar amount to be allocated to African American-owned businesses.

A complete Attachment A (Certified MBE Utilization and Fair Solicitation Affidavit) and Attachment B (MBE Participation Schedule) must be submitted with each bid.

A bidder may count toward its MBE goal expenditures for materials and supplies obtained from certified business suppliers, provided that the certified businesses assume the actual and contractual responsibility for the provision of the materials and supplies. The bidder may count its entire expenditure to a certified business supplier that manufactures or produces goods from raw material or that substantially alters goods before resale. The bidder may count 60 percent of the expenditures to certified suppliers who are not manufacturers toward its MBE goals. The MBE credited supplies may not exceed 60 percent of the credit given toward meeting the contract goal.

The Office of Minority Business Enterprises is located at the Authority's Point Breeze offices at the following address:

Maryland Transportation Authority  
Minority Business Enterprise Office  
2310 Broening Hwy, Suite 150  
Baltimore, MD 21224

Attached are handouts pertaining to the MBE program that were distributed in the meeting:

- Title 21 State Procurement Regulations – Subtitle 06 Contract Formation and Award.
- MDOT Policy Statement – Prompt Payment of Subcontractors.
- MdTA Minority Business Enterprise Program Highlights.
- MDOT Policy Statement – Good Faith Effort –April 22, 2004.
- Good Faith Efforts / Waiver Checklist.
- Additional Information for MBE Subcontractors.
- MBE Compliance Contractor Notification.
- Potential MBE Utilization Analysis

Third Tier MBE/DBE Subcontracting will be approved by MdTA only when MdTA is satisfied that there is no way except by Third Tier contracting that an MBE/DBE goal can be achieved. The Contractor's written request must be submitted prior to contract award and contain specifics as to why a Third Tier contracting agreement is being requested.

It is recommended that all bidders review the pages of the Invitation for Bids entitled "Important Information Regarding MBE Utilization and Bidding Requirements" and "Notice to Bidders/Offerers", which are located in the front of the book, prior to submitting their bid.

After Bill Kirk and John Jewell expanded on the Scope of work and the technical issues regarding this contract the floor was opened for questions.

### ***Questions and other Issues Discussed***

#### **Question :**

The subject of State Wage rates came up. We were asked if they would be used on this project ?

**Response:** Rodger Janssen *MdTA*

This project being in a Class B category (\$100,001-\$500,000), would not be required to follow the State Wages provided in this bid booklet. If a contractor's estimate were to exceed \$500,000 they would be subject to the attached "Wage Rate Schedule" in accordance with sections 17-201 to 17-217 of COMAR.

#### **Question :**

A contractor unable to participate in today's site visit of the roof asked if he could take the site visit at a later time, and who would he have to contact?

**Response:** John Jewell *MdTA*

Contractors can return for site visits and should contact Don Watts at (410) 537-6651.

#### **Question:**

Do all downspouts get replaced?

**Response:**

All the downspouts along the gutter and at scupper locations will be replaced along with the scupper boxes.

**Question:**

Does gutter get replaced?

**Response:**

Yes, the entire gutter will be replaced and if it is necessary to remove the awning it would be the responsibility of the contractor to re-install it.

**Question:**

What is the required roof membrane flashing? On page 76 it calls for 2 plies heat fused and on page 83 it calls for 3 plies in adhesive.

**Response:**

The flashing will consist of (2) membrane plies as explained page 76 and as shown on the contract drawings.

**Question:**

In Section 103 an engineer's office is specified and on the bid form there is a line item for the same. Is it really necessary?

**Response:**

No. On a project having a short duration it is not required. Section 103 will be remove as well as line item 103 in the Schedule of Prices as part of this Addendum #1.

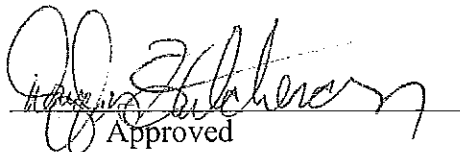
**Question:**

In Section 111 it calls for a digital camera and printer to be furnished to the engineer. Is this required?

**Response:**

Only the digital camera will be required under this contract.

As there were no further questions, the meeting was adjourned.

  
Approved

**LIST OF PURCHASERS OF INVITATION FOR BIDS**

Contract No.: LB 2038-000-002  
 Bid Opening Date: October 3, 2008

Price: \$25.00  
 Class: B

Cole Roofing Co., Inc. 3915 Coolidge Avenue Baltimore, MD 21229 P: (410) 242-0600 F: (410) 242-8007	Ruff Roofers, Inc. 1420 Knecht Avenue Baltimore, MD 21227 P: (410) 242-2400 F: (410) 247-7171	Alliance Roofing & Sheet Metal, Inc. 6420 Erdman Avenue Baltimore, MD 21205 P: (410) 483-7470 F: (410) 483-7471
Peake Construction Inc. 2141 – 30 <sup>th</sup> Street, NE Washington, DC 20018 P: (202) 409-3971 F: (202) 478-1755	R.A.S. Contracting, Inc. 660 Marley Run Huntingtown, MD. 20639 P: (410) 414-3299 F: (301) 868-2116 * *	Boblits Enterprises 6925 Olive Damsel Ct. Hughesville, MD. 20637 P: (301) 274-5555 F: (301) 274-5110
Alliance Roofing & Sheet Metal 6420 Erdman Avenue Baltimore, MD 21205 P: (410) 483-7470 F: (410) 483-7471	Kalkreuth Roofing & Sheet Metal 9001 Baltimore Road Frederick, MD 21704 P: (301) 418-6100 F: (301) 695-0884	Simpson of Maryland, Inc. 7476 Candlewood Rd. Hanover, MD 21076 P: (410) 525-0152 F: (410) 525-0154

# **CONTRACT ADMINISTRATION REQUIREMENTS**

## CONTRACT ADMINISTRATION REQUIREMENTS

Contractor shall:

1. Submit monthly to the Department a report listing any unpaid invoices, over 30 days old, received from any certified MBE subcontractor, the amount of each invoice and the reason payment has not been made.
2. Include in its agreements with its certified MBE subcontractors a requirement that those subcontractors submit monthly to the Department a report that identifies the prime contract and lists all payments received from Contractor in the preceding 30 days, as well as any outstanding invoices, and the amount of those invoices.
3. Maintain such records as are necessary to confirm compliance with its MBE participation obligations. These records must indicate the identity of certified minority and non-minority subcontractors employed on the contract, the type of work performed by each, and the actual dollar value of work performed. Subcontract agreements documenting the work performed by all MBE participants must be retained by the Contractor and furnished to the Procurement Officer on request.
4. Consent to provide such documentation as reasonably requested and to provide right-of-entry at reasonable times for purposes of the State's representatives verifying compliance with the MBE participation obligations. Contractor must retain all records concerning MBE participation and make them available for State inspection for three years after final completion of the contract.
5. At the option of the procurement agency, upon completion of the contract and before final payment and/or release of retainage, submit a final report in affidavit form and under penalty of perjury, of all payments made to, or withheld from MBE subcontractors.

## ATTACHMENTS

- A. Certified MBE Utilization and Fair Solicitation Affidavit (must be submitted with bid or offer)
- B. MBE Participation Schedule (must be submitted with bid or offer)
- C. Outreach Efforts Compliance Statement (must be submitted within 10 working days of notification of apparent award or actual award, whichever is earlier)
- D. Subcontractor Project Participation Statement (must be submitted with 10 working days of notification of apparent award or actual award, whichever is earlier)

# **RECORD RETENTION**

# **Title 21 STATE PROCUREMENT REGULATIONS**

## **Subtitle 06 CONTRACT FORMATION AND AWARD**

### **Chapter 05 Plant Inspection, Audit and Retention of Records**

**Authority: State Finance and Procurement Article, §§12-101, 15-108, and 15-109,  
Annotated Code of Maryland**

#### **.01 Right to Inspect.**

Designees of the procurement agency, the Department of Legislative Services, or any other State unit authorized by law, may inspect at reasonable times the plant, place of business, or jobsite of any bidder or offeror, contractor, prospective subcontractor or assignee, or subcontractor or assignee.

#### **.02 Audits.**

A. Audit of Cost or Pricing Data. Designees of the procurement agency, the Department of Legislative Services, or any other State unit authorized by law may audit during the record retention period the books and records of any person who has submitted cost or pricing data to the extent that the books and records relate to the cost or pricing data.

B. Contract Audit. Designees of the procurement agency, the Department of Legislative Services, or any other State unit authorized by law shall be entitled to audit the books and records of a contractor or any subcontractor under any negotiated contract or subcontract other than a firm fixed-price contract to the extent that the books and records relate to the performance of the contract or subcontract, or if the agency has reason to believe, from an audit of a cost type contract, that costs have been inappropriately assigned to a cost type contract from a fixed price contract.

#### **.03 Record Retention.**

The contractor or subcontractor shall maintain books and records that relate to the cost or pricing data for 3 years from the date of final payment under the contract, unless a longer period is otherwise specified in the contract.

**PROMPT PAYMENT  
TO  
SUBCONTRACTORS**

A. MARYLAND DEPARTMENT OF TRANSPORTATION POLICY  
STATEMENT  
PROMPT PAYMENT OF SUBCONTRACTORS

DISADVANTAGED/MINORITY BUSINESS ENTERPRISES

This policy is in accordance with Maryland State Law, codified at Md. Code Ann., State Finance and Procurement Article, §15-226, and 49 CFR, Part 26, 26.29(b)1-3.

It is the policy of the State that a contractor shall promptly pay a subcontractor any undisputed amount that a subcontractor is entitled to under a State procurement contract for construction. This payment shall be made within ten (10) days of receiving a progress payment or final payment from the State. "Undisputed amount" includes the retainage on a contract.

If a contractor withholds payment, the contractor shall:

1. Notify the subcontractor, in writing within the same ten (10) day time period, stating the reasons for payment being withheld,
2. Provide a copy of the notice to the procurement officer.

If a subcontractor does not receive payment within the required time period, the subcontractor may give written notice of non-payment to the procurement officer. The notice shall include:

1. The name of the contractor, the project under which the dispute exists and the amount in dispute,
2. Provide an itemized description on which the amount is based and
3. If known, provide an explanation for any payment dispute.

Within two (2) business days of receipt of written notice from a subcontractor, a MDOT Agency Representative shall verbally contact the contractor to determine if the amount is undisputed.

If the MOOT Agency Representative determines that all or some of the amount is undisputed, the representative shall instruct the contractor to pay the subcontractor the undisputed amount within three (3) business days. The MDOT Agency Representative shall verbally inform the subcontractor the results of discussions with the contractor. If the payment is not made, the subcontractor may report the non-payment to the procurement officer. As a result, the MDOT Agency Representative shall schedule a meeting of the agency project manager, the subcontractor and the contractor, as follows:

1. The time and location shall be selected by the agency representative,
2. The meeting shall be no later than ten (10) days after receiving notice from the subcontractor,
3. The meeting purpose is to establish the reasons for non-payment,
4. The agency representative shall require the parties to provide information necessary to evaluate the dispute,
5. If the agency representative determines the contractor is delinquent, further progress payments to the contractor may be withheld until the subcontractor is paid.

If the payment to the subcontractor is not made within seven (7) days after the agency representative determines that the contractor is delinquent, the agency representative shall schedule a second meeting on the dispute as follows:

1. The time and location shall be selected by the agency representative,
2. The meeting shall be no later than five (5) days after the close of the seven (7) day period.

After this second meeting, if the agency representative determines the contractor continues to be delinquent in subcontractor payments, he/she:

1. Shall order further payments to the contractor not be processed until payment is made to and verified with the subcontractor,
2. May order work under the contract be suspended based on the contractor's failure to meet contractual obligations under the contract,

3. May require the contractor to pay a penalty to the subcontractor, not to exceed \$ 100 per day, from the date that the payment was required, not to include any period that the agency representative determines that the subcontractor was not diligent in reporting non-payment to the procurement officer. The contractor or subcontractor may appeal the decision after the second meeting, noted above to the procurement officer. The contractor shall comply with the procurement officer's decision.

An act, failure to act or decision of the procurement officer or agency representative may not:

1. Affect the rights of the contracting parties under other provision of law, be used as evidence on the merits of a dispute between the agency and the contractor or the contractor and the subcontractor in any other proceeding or
2. Result in liability against or prejudice the rights of the agencies of the Maryland Department of Transportation.

A decision of a procurement officer or an agency representative designated by the procurement officer under this law is not subject to judicial review or the provision for bid protests and contract claims before the Board of Contract Appeals. This law shall be construed only prospectively and may not be applied or interpreted to have any effect on or application to any State procurement contract awarded before the effective date of this law, October 1, 1999.

**MINORITY  
BUSINESS  
ENTERPRISE  
PROGRAM  
HIGHLIGHTS**

## **Maryland Transportation Authority**

### **Minority Business Enterprise Program Highlights**

For purposes of MBE contract goal attainment and MBE Contract Compliance, the following information highlights the Maryland Department of Transportation (MDOT) Program Requirements:

1. Any participating MBE must be certified by MDOT to perform the item(s) of work /service selected for contract goal attainment.
2. Any participating MBE must serve a commercially useful function and may not act like a broker, unless it is certified as a broker (insurance or real estate). A firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carries out its responsibilities by actually performing, managing and supervising the work involved and /or negotiates the cost of, arranges and accepts delivery of and pays for the materials or supplies required for the work of its contract. If, at any time before execution of the contract, the contractor determines that the designated MBE subcontractor has or will become unavailable, it immediately shall notify the Administration.
3. Any change in the approved MBE Plan must be approved in advance by the Administration and shall indicate the contractor's efforts to substitute another certified MBE subcontractor to perform the work.

4. Contract Goal Credits for Materials and Supplies.

- a. A bidder may count toward its MBE goal expenditures for materials and supplies obtained from certified business suppliers, provided that the certified businesses assume the actual and contractual responsibility for the provision of the materials and supplies. The bidder may count its entire expenditure to a certified business supplier that manufactures or produces goods from raw material or that substantially alters goods before resale. The bidder may count 60 percent of the expenditures to certified suppliers who are not manufactures towards its MBE goals. The MBE credited supplies may not exceed 60 percent of the credit given toward meeting the contract goal.
- b. Double Payee (Joint) checks to MBEs and suppliers for materials used by an MBE sub-contractor for its contracted work are allowable providing such a payment arrangement is offered to all subcontractor relationships and not restricted to just MBEs, and the MBE participates in scheduling the delivery of the materials and is fully responsible for ensuring that the materials meet specifications. However, when the contractor makes such payments, it is recommended that the payments be made by jointly endorsable checks signed by the contractor and MBE.
- c. For MBE firms that are not MBE regular dealers or manufacturers, a contractor may only count toward its MBE goal the fees charged for delivery of materials and supplies required on the job site (but not the cost of the materials and supplies themselves) when the trucking enterprise or delivery

service is not also the manufacturer of or regular dealer in the materials and supplies, provided that the fee is determined by the administration to be reasonable and not excessive as compared with fees customarily allowed for similar services.

5. Third Tier Subcontracting. Third Tier Contracting is not the usual way for a prime contractor to achieve a MBE goal. However, there may be rare occasions when third tier contracting would be acceptable. Two conditions must be met before approval of a third tier contracting arrangement, which may be entered into to meet a MBE goal:
  - a. The Authority must be satisfied that there is no way except by third tier contracting that a DBE goal can be achieved;
  - b. The prime contractor must request of the Authority, in writing, prior to the awarding of a contract, that approval be granted for each third tier contract arrangement. The request must contain the specifics as to why a third tier contracting arrangement is being requested to meet the MBE goal.

6. Waivers:

The Administration will strictly adhere to the requirement for documentation of any waiver requests as provided in COMAR. Accordingly, if, for any reason, a contractor is unable to achieve the contract goal or sub-goal MBE participation, it may request, in writing, an exception (waiver) to the goal with justification to include the following:

- a. A detailed statement of the efforts made to select portions of the work proposed to be performed by certified MBE (s);

- b. A detailed statement of the efforts made to contract and negotiate with certified MBEs including:
- (i) The names, addresses, dates and telephone numbers of MBEs contacted; and
  - (ii) A description of the information provided to MBEs regarding the plans, specifications and anticipated time schedule for portions of the work to be performed;
  - (iii) As to each certified MBE that placed a subcontract quotation or offer that your company considers not to be acceptable, a detailed statement of the reasons for this conclusion; and
  - (iv) A list of certified MBEs found to be unavailable. This list should be accompanied by a MBE Unavailability Certification (Form D-EEO-005) signed by the MBE, or a detailed statement from the contractor concerning the MBE's refusal to give the certification.

A waiver of a contract goal may be granted only upon a reasonable demonstration by the bidder or offeror that certified MBE participation was unable to be obtained or was unable to be obtained at a reasonable price and if the Administration determines that a waiver serves the public interest.

7. MBE Contract Compliance Monitoring .... MBE contract compliance monitoring commences upon official award of the contract has been made and continues throughout the life of the contract. An assigned contract compliance officer will advise the contractor and all approved participating MBE subcontractors, in writing, of compliance requirements, monitoring activities and will request necessary records

to establish MBE contractor compliance. If a contractor or any participating MBE subcontractor is found to be in non-compliance with the terms of MDOT's MBE Program or with the State's MBE Law, and fails or refuses to take the corrective action required, administrative sanctions may be imposed in order to promote the purpose of MDOT's MBE Program. These may be, suspension of work, withholding payment, referral of the matter to the Office of the Attorney General for action, or any other action that is authorized under the contract or by State or federal laws.

8. Fraud Provisions

Bidders are advised that Section 14-308 of the MBE Law provides that a person may be prosecuted for a felony for the following acts:

- a. Fraudulently obtaining, holding or attempting to obtain or hold MBE certification;
- b. Aiding another person in fraudulently obtaining, holding or attempting to obtain or hold MBE certification;
- c. Willfully obstructing, impeding, or attempting to obstruct or impede a State official or employee or employee investigating the qualifications of a business entity that has requested certification;
- d. Fraudulently obtaining, attempting to obtain, or aiding another person in fraudulently obtaining or attempting to obtain, public monies to which the person is not entitled; or
- e. In any minority business enterprise matter administered under subtitle 14:
  - (i) Willfully falsify, conceal, or cover up a material fact by any scheme or device;

- (ii) Make a false or fraudulent statement or representation; or
- (iii) Use a false writing or document that the person knows to contain a false statement or entry

Persons found guilty of violating these provisions are guilty of a felony and on conviction are subject to a fine not exceeding \$ 20,000 or imprisonment not exceeding five years, or both. Persons convicted under Section 14-308 may also be debarred from performing on State contracts by the Board of Public Works ("Board") for a period of time determined to be appropriate by the Board under the circumstances.

#### 9. MBE Contract Support

Personnel of the Maryland Department of Transportation, its Administrations and the Authority offer contractor practicable support for MBE contract goal attainment. This assistance is available from Monday through Friday during normal business hours by calling 410-865-1269. Examples of MDOT Program assistance include:

##### **To Majority Contractors**

- Identifying subcontract items for goal attainment
- Answering questions related to MBE Program requirements

##### **To Minority Contractors**

- Answering questions related to MBE Program requirements
- Providing information on required contract records
- Referral to designated consultants for assistance for business related problems

**MINORITY  
DISADVANTAGE  
BUSINESS  
ENTERPRISES**

MARYLAND DEPARTMENT OF TRANSPORTATION  
POLICY STATEMENT – GOOD FAITH EFFORTS  
April 22, 2004

MINORITY/DISADVANTAGED BUSINESS ENTERPRISES

It is the policy of the Maryland Department of Transportation (MDOT) that businesses owned by socially and economically disadvantaged person(s) shall have the maximum feasible opportunity to participate in the performance of contracts awarded by MDOT. The MDOT requires its contractors and subcontractors not to discriminate on the basis of race, color, religion, national origin, sex or disability in the award or performance of contracts. In support of this commitment, the MDOT has adopted the following Good Faith Efforts (GFE) Policy, which shall be applicable to all contracts awarded by the MDOT or its modal administrations.

In accordance with 49 CFR, Part 26, 53 and Md. Code Ann., State Fin. & Proc. Art., 14-302, the MDOT shall award a contract only to a bidder/offeror that makes GFE to meet the Minority Business Enterprise (MBE) or Disadvantaged Business Enterprise (DBE) contract goal. A determination that a bidder/offeror has made GFE shall only be made upon a determination by the MDOT that the bidder/offeror has shown that it:

- Has obtained enough MBE or DBE participation to meet the contract goal; or
- Has taken all necessary and reasonable steps to achieve the goal, which by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient MBE/DBE participation, even if they were ultimately unsuccessful.

The MDOT will make a fair and reasonable judgment whether a bidder/offeror who did not meet the goal made adequate GFEs. This policy expands the definition of GFE to allow greater flexibility to ensure DBE/MBE participation is obtained.

At a minimum, a statement of GFE submitted by the bidder/offeror shall include:

1. The name, address, and telephone number of all DBE/MBEs contacted, as well as the date of contact;
2. A description of the information provided to the contacted DBE/MBEs regarding the plans, specifications and anticipated time schedule for portions of the work to be performed;
3. As appropriate, a detailed statement of the reasons why a DBE/MBE quotation was considered unacceptable; and
4. As appropriate, a list of DBE/MBE contractors found to be unavailable. For DBE/MBE contractors that are unavailable, the bidder/offeror shall provide a Minority Contractor Unavailability Certificate Form (Form D-005) signed by an

owner or officer of the DBE/MBE. If a DBE/MBE refuses to sign the unavailability certificate, the bidder/offeror shall submit a statement indicating as such.

To aid in the determination of whether the bidder/offeror has shown GFE, the MDOT may also look at the percentage of DBE/MBE participation obtained by other bidders/offerors on the procurement.

In addition to the requirements above, the following is a list of outreach efforts that MDOT will consider as part of the bidder/offeror's GFE to obtain DBE/MBE participation. Bidders/offerors shall be encouraged to offer innovative GFE initiatives to demonstrate GFE. MDOT administrations have the flexibility to approve such innovative initiatives. The following list is illustrative only and not intended to be exhaustive.

In a GFE determination, MDOT administrations may consider any information provided by a bidder/offeror concerning the following outreach efforts:

1. The bidder/offeror's efforts to solicit through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of certified DBEs/MBEs that may have the capability to perform the work of the contract. The bidder/offeror should present evidence that it solicited this interest within adequate time to allow the DBEs/MBEs to respond to the solicitation. The bidder/offeror should also provide evidence that it took appropriate steps to follow up initial solicitations.
2. The bidder/offeror's selection of the work to be performed by DBEs/MBEs in order to increase the likelihood that the DBE/MBE contract goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE/MBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
3. The bidder/offeror's actions to provide interested DBEs/MBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
4. The bidder/offeror's negotiations with DBE/MBEs
  - a. Negotiating in good faith with interested DBEs/MBEs. It is the bidder/offeror's responsibility to make a portion of the work available to DBE/MBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE/MBE subcontractors and suppliers. Evidence of such negotiation shall include the names, addresses, and telephone numbers of DBEs/MBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and information as to why additional agreements could not be reached for DBEs/MBEs to perform the work.

- b. A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE/MBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs/MBEs is not in itself sufficient reason for a bidder/offeror's failure to meet the contract DBE/MBE goal, as long as such costs are reasonable. Also, the ability or desire of a bidder/offeror to perform the work of a contract with its own organization does not relieve that bidder/offeror of the responsibility to make GFE to meet the contract goal. This policy does not require a prime contractor to accept a higher quote from a DBE/MBE if the price is excessive or unreasonable.
5. The bidder/offeror must provide sound reasons for rejecting a DBE/MBE as unqualified. Any rejection of a DBE/MBE as unqualified shall be based on a thorough investigation of its capabilities. The DBE/MBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union vs. non-union employees status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
6. The bidder/offeror's efforts to assist interested DBEs/MBEs in obtaining bonding, lines of credit, or insurance as required by the owner or contract.
7. The bidder/offeror's efforts, with prior written approval of the MDOT agency, to assist interested DBEs/MBEs to obtain necessary equipment, supplies, materials, or related assistance or services.
8. The bidder/offeror's effective use of the services of available minority/women community organizations; minority/women contractors' groups; local, state and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE/MBE.
9. The bidder/offeror's efforts to identify and assist firms that are not certified but could possibly service on a contract and satisfy DBE/MBE goals if the firm were to be certified by the MDOT.
10. Evidence of the bidder/offeror's record of meeting or exceeding DBE/MBE participation goals on prior projects.

This policy applies to all MDOT contracts that contain a DBE/MBE participation goal. All MDOT personnel are responsible for implementing and adhering to this policy.

**GOOD FAITH  
EFFORTS WAIVER  
CHECKLIST**

## **PRIME CONTRACTORS'** **GOOD FAITH EFFORTS/WAIVER CHECKLIST**

### **Prime Contractors who put Good Faith into action will:**

- ✓ Use direct solicitation, minority/women community organizations, contractors' groups, and local, state, and federal minority/women-owned business assistance offices to reach MBE's;
- ✓ Identify and assist firms that may need bonding, lines of credits, insurance, equipment, and other related issues; or assist firms that are not certified but could possibly serve on a contract and satisfy DBE/MBE goals by becoming certified;
- ✓ Identify clear sub-contractible work that will enable MBE's to compete;
- ✓ Provide the MBEs with proper information regarding the job; to include plans, specifications, and anticipated time schedule for portions of the work to be performed;
- ✓ Coordinate pre-bid meetings to inform MBEs of contracting and subcontracting opportunities;
- ✓ Advertise in general circulation, trade associations, and minority focused media concerning the subcontracting opportunities;
- ✓ Provide written notice to all certified MBEs who are certified in the work areas and have capabilities of the contract for which their participation is solicited (Contractor must allow a minimum of 10 days for the MBEs to respond to the written solicitation.); and
- ✓ Follow up on initial solicitations of interest by contacting MBEs to determine if the MBEs are interested (Contractor must detail the efforts showing names, addresses, dates, and telephone numbers of the certified MBEs contacted along with a description of information provided.)

### **Prime Contractors who have done the above and are submitting a waiver will:**

- ✓ Document everything listed above;
- ✓ As required by regulations provide a written request for a waiver;
- ✓ Provide detailed statements of efforts to achieve the goal; to include the name, address and telephone number of all DBE/MBEs contacted, as well as the date of contact;
- ✓ Provide a list of unavailable MBEs, including a Minority Contractor Unavailability Certification Form (Form D-005) signed by an owner or officer of each unavailable DBE/MBE (If the DBE/MBE refused to sign D-005, the contractor will should submit a statement regarding this refusal.);
- ✓ If the contractor deems a DBE/MBE to be unqualified and rejects the DBE/MBE, the contractor will provide written explanation of this decision (Contractor's reasoning must be based on a thorough investigation of MBE capabilities.);
- ✓ Provide evidence that the contractor tried to negotiate in good faith with interested MBEs;
- ✓ Demonstrate that certified MBE participation was unable to be obtained at a reasonable price or that public interest is best served by a waiver;
- ✓ Demonstrate a reasonable effort to meet the overall MBE goal with other MBE classifications if the request for a waiver is for a certain MBE classification within an overall MBE goal; and
- ✓ Provide evidence from prior projects showing that the contractor has previously successfully met or exceeded assigned MBE goals.

**ADDITIONAL  
INFORMATION FOR  
MBE  
CONTRACTORS**

## **ADDITIONAL INFORMATION FOR MBE SUBCONTRACTORS**

### **MBE REPORT OF PAYMENTS RECEIVED**

By the 15<sup>th</sup> of each month the MBE should submit this document to the Authority's MBE Office. It should be submitted even if there are no payments for the month.

### **PROMPT PAYMENT TO SUBCONTRACTORS**

It is the policy of the State that a contractor shall promptly pay a subcontractor any undisputed amount that a subcontractor is entitled to under the contract for construction. This payment shall be made within ten (10) days of receiving a progress payment or final payment from the State. Undisputed amounts include the retainage on a contract.

### **RECORDS RETENTION**

Title 21 of the State Procurement Regulations, Subtitle 06 Contract Formation and Award, Chapter 5 Plant Inspection, Audit and Retention of Records, .03 Records Retention contains the following regulation: The contractor or subcontractor shall maintain books and records that relate to the cost or pricing data for 3 years from the date of final payment under the contract, unless a longer period is otherwise specified in the contract.

### **FRAUD PROVISIONS**

Contractors are advised that State Finance and Procurement Article 14-308 covers prohibited acts and penalties for felony and misdemeanor offenses.

### **STATE OF MARYLAND GOVERNOR'S OFFICE OF MINORITY AFFAIRS (GOMA)**

The state's principal advocates for minority businesses, we help minority business owners who are seeking state certification and state procurement opportunities. We also help minority business owners who believe they have been treated unfairly by a state agency or other entity.

We provide referrals to agencies and other entities that have programs to assist minority business owners in getting the services they need to start, develop and grow. For more information regarding GOMA log on to [www.mdminoritybusiness.com](http://www.mdminoritybusiness.com), or by calling 410-767-8232.

## ENTREPRENEURIAL DEVELOPMENT INSTITUTE (EDI)

EDI helps meet the education needs of small and minority businesses in construction and related business fields. The Maryland State Highway Administration's Equal Opportunity Office provides the services of the EDI. Centered at the University of Maryland Eastern Shore (UMES), EDI classes are held on weekends. A nominal fee of \$50.00 is charged for the classes and hotel accommodations. For schedule and registration information, contact the EDI Coordinator at (410) 651-6476.

## MSBDFA BONDING AND CONTRACT FINANCING PROGRAM

The Maryland Small Business Development Financing Authority (MSBDFA) offers program through four programs: Contract Financing, Long Term Guaranty Program, Surety Bond Guaranty Program and Equity Participation Investment Program. They provide contract financing and surety bonding assistance to eligible firms to begin, continue and complete work on MDOT contracts. Firms bidding on MDOT contracts needing a bid, performance or payment bond or working capital can contact the office at (410) 333-4270.

## PROFESSIONAL ASSISTANCE

An MBE firm certified by MDOT may request referral assistance in any area of business by calling the MBE Information Line, 1-800-544-6056 in the Office of Minority Business Enterprise.

## THE STATE OF MARYLAND SMALL BUSINESS RESERVE PROGRAM

The State of Maryland Small Business Reserve Program is committed to the growth and success of small businesses. For the first time, small businesses will be able to bid for State contracts without competing with larger, more established companies.

Beginning October 1, 2004, designated agencies will be required to award a minimum of 10 percent of their units' total dollar value of goods, supplies, services, maintenance, construction, construction related, architectural service and engineering service contracts to small businesses. For more information regarding the Small Business Reserve Program log on to [www.smallbusinessreserve.maryland.gov](http://www.smallbusinessreserve.maryland.gov), or by calling 410-767-4270.

**MBE COMPLIANCE  
CONTRACTOR  
NOTIFICATION**

## **MBE COMPLIANCE CONTRACTOR NOTIFICATION**

On MdTA Contracts, the prime/general contractor must notify the MBE compliance office of any changes to the approved MBE submittal package. This includes increasing the target MBE goal as well as decreasing the target goal. The notification must be in writing and include at a minimum the following information:

- A. Decrease of the target goal
  - a. MdTA contract number
  - b. Prime/General Contractor
  - c. MBE Contractor/Contractors affected
  - d. Contract Item Numbers
  - e. Actual dollar value of items
  - f. Percentage of decrease to target goal
  - g. Reason for decrease
  - h. List of other certified MBE Contractors who are contacted as replacements to attain target goal. This should include copies of correspondence from the prime/general contractor requesting quotes for the work and response from the MBE contacted.
  
- B. Increase of the target goal
  - a. MdTA contract number
  - b. Prime/General Contractor
  - c. MBE Contractor Name & Address
  - d. Contract Item Number
  - e. Actual dollar of value items
  - f. Percentage of increase above target goal

Correspondence concerning the above will be sent directly to:

Mrs. Meshelle M.V. Howard  
Maryland Transportation Authority  
Chief, MBE Program  
2310 Broening Highway  
Suite 150  
Baltimore, MD 21224

The Office of Construction will receive a copy of the correspondence at the following address:

Mr. David Ferrara  
Maryland Transportation Authority  
Director of Construction  
304 Authority Drive  
Baltimore, MD 21222

**ALL OTHER QUESTIONS CONCERNING MBE COMPLIANCE CAN BE DIRECTED  
TO THE FOLLOWING COMPLIANCE TEAM:**

Valencia Hainesworth  
Compliance Supervisor  
410-537-5661

Karen Karris  
Compliance Officer  
410-537-5660

Orlando Price  
Compliance Officer  
410-537-1052

**POINTS OF CONTACT**  
**Maryland Transportation Authority**

**All Shop Drawings:**

Mr. Abey Tamrat  
Maryland Transportation Authority  
300 Authority Drive  
Baltimore, MD 21222  
[atamrat@mdta.state.md.us](mailto:atamrat@mdta.state.md.us)

Phone: (410) 537-7822  
Fax: (410) 537-7801

**All Other Correspondence:**

Mr. David Ferrara  
Director of Construction  
Maryland Transportation Authority  
Engineering Division  
304 Authority Drive  
Baltimore, Maryland 21222  
[dferrara@mdta.state.md.us](mailto:dferrara@mdta.state.md.us)

Phone: (410) 537-7882  
Fax: (410) 537-7802

**Certified Payrolls:**

Two (2) complete copies of certified payrolls are to be delivered to the MdTA Project Inspector at the field office for all contractors employed on the project. One (1) complete copy is to be sent to the Commissioner of Labor & Industry. **No certified payrolls are to be mailed or delivered to the FSK Bridge.**

## **Documents Required Before Commencing Work**

- Three (3) emergency phone numbers.
- All subcontractors must be approved by the Engineering Division. Contractor must provide name of subcontractor, address, dollar value of subcontract, item number and description of work.
- MBE subcontractors must be approved by the Chief, Equal Opportunity, and by the Engineering Division.
- All certificates of insurance for the minimum amounts as required by the Special Provisions.
- Submit payment breakdown for all lump sum items.
- Progress Schedule.
- MOT Plans.
- Catalog Cuts for all M.O.T. devices both permanent and temporary.